

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

11 KELSEY CURTIS,

12 v.
13 Plaintiff,

14 JAMES RIVER INSURANCE
15 COMPANY,

16 Defendant.

17 CASE NO. C19-1565 MJP

18 ORDER ON MOTIONS IN LIMINE

19 THIS MATTER comes before the Court on Plaintiff's Motions in Limine (Dkt. No. 23)
20 and Defendant's Motions in Limine (Dkt. No. 25). Having reviewed the Motions, the Responses
21 (Dkt. Nos. 32, 41), and all related papers, the Court rules as follows:

22 **I. Plaintiff's Motions in Limine**

23 **Motion in Limine No. 1** seeks to exclude any argument or discussion about the effect of
24 the lawsuit on insurance rates and premiums. (Dkt. No. 23 at 2.) Plaintiff's Motion in Limine
No. 1 is GRANTED.

1 **Motion in Limine No. 2** seeks to exclude evidence that non-economic damages should
2 be reduced because the sum will grow if invested. (Dkt. No. 23 at 2.) Defendant agrees not to
3 introduce such evidence. Plaintiff's Motion in Limine No. 2 is GRANTED.

4 **Motion in Limine No. 3** seeks to exclude evidence regarding the filing of motions in
5 limine. (Dkt. No. 23 at 2.) Defendant agrees not to introduce such evidence. Plaintiff's Motion
6 in Limine No. 3 is GRANTED.

7 **Motion in Limine No. 4** seeks to exclude any evidence not properly disclosed during
8 discovery. (Dkt. No. 23 at 2.) Plaintiff's Motion in Limine No. 4 is GRANTED.

9 **Motion in Limine No. 5** seeks to exclude evidence of collateral sources, specifically all
10 evidence of Plaintiff's health insurance. (Dkt. No. 23 at 3.) Defendant agrees not to introduce
11 such evidence. Plaintiff's Motion in Limine No. 5 is GRANTED.

12 **Motion in Limine No. 6** seeks to prohibit any argument that an award of non-economic
13 damages "will not make Plaintiff's pain go away." (Dkt. No. 23 at 4.) Defendant agrees not to
14 make this argument. Plaintiff's Motion in Limine No. 6 is GRANTED.

15 **Motion in Limine No. 7** seeks to exclude settlement offers made by Defendant after
16 Plaintiff filed her lawsuit on September 13, 2018. (Dkt. No. 23 at 4.) Plaintiff's Motion in
17 Limine No. 7 is GRANTED.

18 **Motion in Limine No. 8** seeks to exclude evidence that Plaintiff was not wearing a
19 seatbelt. Defendant agrees not to introduce such evidence. Plaintiff's Motion in Limine No. 8 is
20 GRANTED.

21 **Motion in Limine No. 9** seeks to exclude evidence regarding Plaintiff's initial demand
22 because it violates FRE 408 and is more prejudicial than probative under FRE 403. (Dkt. No. 23
23 at 5.) Plaintiff's Motion in Limine No. 9 is DENIED.

1 **Motion in Limine No. 10** seeks to exclude evidence regarding the content of the claim
2 file, the setting of reserves, settlement authority, and evaluation of Plaintiff's UIM claim because
3 Defendant did not produce these during discovery. (Dkt. No. 23 at 6.) Plaintiff's Motion in
4 Limine No. 10 is GRANTED. Defendant may only introduce evidence it has previously
5 produced to Plaintiff.

6 **Motion in Limine No. 11** seeks to exclude evidence that Plaintiff's expert, Steven
7 Strzelec, was terminated from State Farm allegedly because of anonymous complaints about
8 sexual harassment. (Dkt. No. 23 at 11.) Plaintiff's Motion in Limine No. 11 is DENIED, but
9 Defendant may only introduce evidence regarding the fact that Mr. Strzelec was terminated
10 without discussing any alleged reasons for the termination.

11 **Motion in Limine No. 12** seeks to exclude evidence that the arbitration clause in the
12 policy should have alerted Plaintiff that a dispute over the value of claims is inherent in
13 settlement negotiations. (Dkt. No. 23 at 13-14.) Plaintiff's Motion in Limine No. 12 is
14 GRANTED.

15 **II. Defendant's Motions in Limine**

16 **Motion in Limine No. 1** seeks to exclude reference to the "golden rule" or similar
17 themes. (Dkt. No. 25 at 2.) Plaintiff agrees not to make such references. Defendant's Motion in
18 Limine No. 1 is GRANTED.

19 **Motion in Limine No. 2** seeks to preclude argument or testimony equating the duty to
20 uninsured motorists with that owed to other first-party insureds. (Dkt. No. 25 at 3.) Defendant's
21 argument that it had a lesser duty of good faith to Plaintiff because she was not a first-party
22 insured is incorrect, especially here, where coverage is uncontested. (Dkt. No. 45 at 2.)
23 "[W]hile the insurer is free to be adversarial in the context of assuming the uninsured driver's
24

1 role in response to its insured's claims, it is not free to be adversarial in the context of fulfilling
2 its policy obligations or other duties that apply to it as an insurer." Tavakoli v. Allstate Prop. &
3 Cas. Ins. Co., No. C11-1587RAJ, 2012 WL 6677766, at *7 (W.D. Wash. Dec. 21, 2012).

4 Defendant's Motion in Limine No. 2 is DENIED.

5 **Motion in Limine No. 3** seeks to preclude Plaintiff's treating physician from offering
6 any opinions because he admits he is not an expert and was not disclosed as an expert witness.
7 (Dkt. No. 25 at 4.) Plaintiff agrees to limit Dr. Davis's testimony to the facts of Plaintiff's
8 treatment and an explanation of the procedures he prescribed. (Dkt. No. 32 at 4-5.) Defendant's
9 Motion in Limine No. 3 is GRANTED.

10 **Motion in Limine No. 4** seeks to preclude Plaintiff's treating physician, Dr. Moe, from
11 opining on causation because in his deposition he stated that he could not testify to the cause of
12 Plaintiff's nasal drainage. (Dkt. No. 25 at 4-5.) Having reviewed Dr. Moe's full deposition
13 testimony, the Court finds that he provided a sufficient basis for the conclusion that the collision
14 was the cause of Plaintiff's condition. Defendant's Motion in Limine No. 4 is DENIED.

15 **Motion in Limine No. 5** seeks to exclude evidence of future treatment because Plaintiff
16 has no expert testimony concerning the cost of such treatment. (Dkt. No. 25 at 5-6.) Plaintiff
17 contends she has provided receipts showing the cost of her inhalers and medical records
18 demonstrating the inhalers treat a permanent condition. (Dkt. No. 32 at 6-7.) Further, Plaintiff's
19 treatment providers will testify as to the necessity of future care. (*Id.*) Defendant's Motion in
20 Limine No. 5 is DENIED.

21 **Motion in Limine No. 6** seeks to exclude expert Stephen Strzelec's testimony because
22 his expert report reveals that his testimony will be conclusory and he has failed to describe the
23 industry standards that form the basis of his opinion. (Dkt. No. 25 at 7-9.) Without hearing the
24

1 testimony, the Court cannot preemptively grant this request. Defendant's Motion in Limine No.
2 6 is DENIED.

3 **Motion in Limine No. 7** seeks to preclude Mr. Strzelec from referring to Defendant's
4 initial offer as the “\$0.50 offer.” (Dkt. No. 25 at 9.) Defendant's Motion in Limine No. 7 is
5 DENIED.

6

7 The clerk is ordered to provide copies of this order to all counsel.

8 Dated November 22, 2019.

9



10
11 Marsha J. Pechman
12 United States District Judge
13
14
15
16
17
18
19
20
21
22
23
24